

**BOARD OF APPEALS CASE NO. 5434**

\*

**BEFORE THE**

**APPLICANTS: Donald & Mary Sue Lynch**

\*

**ZONING HEARING EXAMINER**

**REQUEST: Special Exceptions for commercial  
vehicle storage and construction services;  
20 Carico Lane, Churchville**

\*

**OF HARFORD COUNTY**

\*

**Hearing Advertised**

\*

**Aegis: 7/14/04 & 7/21/04**

**HEARING DATE: September 1, 2004**

**Record: 7/16/04 & 7/23/04**

\*

\* \* \* \* \*

### **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Donald F. and Mary Sue Lynch, are seeking a Special Exception pursuant to Section 267-53D(1) of the Harford County Code, to allow the storage of commercial vehicles in an Agricultural District, and a Special Exception, pursuant to Section 267-53H(1), to allow construction services in an Agricultural District.

The subject property is located at 20 Carico Lane, Churchville, Maryland 21028, in the Third Election District, and is more particularly identified on Tax Map 43, Grid 2A, Parcel 383, Lot 2. The parcel contains approximately 6.003 acres.

The Applicant, Donald Lynch, appeared and testified that he and the Co-Applicant, Mary Sue Lynch, are the owners of the subject property. Mr. Lynch stated that his residence is accessed by way of Carico Lane, which is actually a private gravel drive. His house is the only residence whose occupants currently utilize Carico Lane. A farmer named John Ball also uses the drive to access his undeveloped farmland. The witness indicated that Mr. Ball advised him both verbally, and in writing that he has no objection to the granting of the requested special exception. A letter to that effect, signed by John and Naomi Ball, was introduced as Applicant's Exhibit 10.

Mr. Lynch testified that he and his wife purchased the subject property in the fall of 1998, and have lived there ever since with some, or all of their five children. The original home was over 150 years old when purchased. The Applicants, have constructed two additions to the original dwelling. Mr Lynch indicated that the site plan, designated as Attachment 3 to the Department of Planning and Zoning Staff Report, is a fair and accurate rendition of the subject property. The structure designated on that site plan as a "proposed 40 foot by 60 foot pole building" has now been completed, in accordance with what the witness described as good engineering practices. The photographs introduced as Applicant's Exhibits 8E and 8F depict the completed building.

The witness stated that the closest adjoining residential property is located on the opposite side of MD Route 155. The second closest residence is the preacher's home at the Baptist Church approximately 100 feet away from his home. As shown in the ariel photograph introduced as Applicant's Exhibit 9, the subject parcel is located in the center of a large agricultural area. Mr. Lynch testified that most of the vegetation found on his property consists of mature trees, approximately 80 to 100 feet in height. These tall trees screen the improvements on the property from neighboring residential lots. There are no cultural or historical structures located on the subject property.

## Case No. 5434 - Donald & Mary Sue Lynch

Mr. Lynch is self-employed as the owner of Lynch Construction, Incorporated. The business is a full service residential remodeling and design company, which has operated as a licensed home improvement contractor since 1975. The company has four employees, only one to two of whom visit the subject property on a daily basis. The other two employees work offsite at various job locations. The average number of daily trips generated by the business ranges between two and five. The company may hire additional employees in the future, but Mr. Lynch does not anticipate ever employing more than eight people. Typical work hours range from 8:00 a.m., and 4:00 p.m. Employees occasionally return to the property later than 4:00 p.m., but never later than 6:00 p.m. Carico Lane, which exits directly onto MD Route 155, provides ingress and egress to the subject property. According to the witness, there is ample site distance at the intersection of Carico Lane and Route 155 to handle all traffic generated by his business operations.

The company owns and operates two commercial vehicles and a small utility trailer. The vehicles, a 1989 Chevrolet van and a 1999 Chevrolet van, are both under 10,000 lbs. gross vehicle weight. One of the vans has the business name painted on the side, the other does not. Photographs of the vans were introduced as Applicant's Exhibits 8G and 8H. The business does not plan to purchase any additional vehicles within the near future. All commercial vehicles will be stored inside the existing pole barn. The witness also plans to construct a 15 foot by 30 foot office with a bathroom inside that building. The office will be used for the operation of the business, and will house only office furniture and equipment. It will not be visible from outside the building.

The pole barn will also be utilized to store excess material between jobs. Construction materials are ordinarily shipped directly to job sites, and only leftover materials will be stored on the property. No hazardous materials will be kept on the premises. There is no outdoor lighting or signage, either existing or planned, and no motor vehicle repairs or services will be conducted on the premises in connection with the business. No odors, fumes, or noise will be generated by the proposed special exception uses.

Mr. Lynch testified that in his opinion, the proposed special exception uses would have no greater adverse impact at the proposed location than they would have if located elsewhere within the Agricultural District. He also indicated that he had reviewed the Staff Report, and agreed with all proposed conditions set forth therein.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified regarding the findings of fact, and recommendations made by that agency. The Department reviewed the Application and Attachments, and visited the site and surrounding area. According to Mr. McClune, the Applicants meet or exceed all standards set forth in Harford County Code Sections 267-53(B)(1) and 267-53(H)(1). He emphasized that the Applicants operate a small construction business, that the vehicles and equipment stored on the property will be limited in scope, and will not be visible from surrounding properties.

## Case No. 5434 - Donald & Mary Sue Lynch

Mr. McClune further testified that the Department had considered all provisions set forth in Harford County Code Section 267-9I in connection with subject request, and determined that the proposed facility meets all requirements of that Code provision. With regard to Section 267-9I (1), Mr. McClune noted that the subject parcel is fairly isolated, and is not easily visible from surrounding properties. Regarding Section 267-9I (2), Mr. McClune indicated that the subject parcel is located approximately 700 feet away from MD Route 155, and fronts on the southwest side of Carico Lane, a private road with a 60 foot right-of-way. He stated that both of these roads are adequate to service the number of daily trips typical for similar uses found within the within the AG District. The Applicants would however, be required to make any necessary upgrades needed to provide access to MD Route 155 from Carico Road.

Finally, Mr. McClune stated that, in his opinion, the proposed use, at the proposed location, would not cause any adverse impact to adjoining properties. He further opined that the proposed uses would cause no greater impact at this location than they would cause elsewhere within the Agricultural District.

The Department recommended approval of the subject application in its July 26, 2004 Staff Report, subject to four conditions set forth in that report. Mr. McClune stated that the Department is now proposing a fifth condition, which would require the Applicants to make all repairs and maintenance to Carico Lane necessitated by their use of that roadway. On cross examination, Mr. McClune acknowledged that Carico Lane is a private right-of-way, subject to a Common Drive Agreement. Based on that Agreement, it is possible that another entity may also end up using Carico Lane, if, or when an additional existing lot is developed. Mr. McClune clarified that the Department's intent is merely to require the Applicants to perform repairs and maintenance necessitated by their use of Carico Lane in connection with the granting of the requested special exception.

The Applicant, Donald F. Lynch, stated on redirect that he agreed with the proposed fifth condition.

No witnesses appeared in opposition to this Application.

## CONCLUSION

The Applicants, Donald and Mary Sue Lynch, are seeking a Special Exception, pursuant to Section 267-53D(1) of the Harford County Code, to allow the storage of commercial vehicles and a special exception pursuant to Section 267-53H(1) of the Harford County Code to allow construction services in an Agricultural District.

The relevant Provisions of the Harford County Code with regard to special exception uses are set forth below:

Section 267-51 provides:

“Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Case No. 5434 - Donald & Mary Sue Lynch

Section 267-52 provides:

“General Regulations

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant of approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”

Section 267-53D(1) provides:

- D. Motor Vehicle and related services:
  - (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:
    - (a) The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.
    - (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.
    - (c) A minimum parcel area of two (2) acres shall be provided.

## Case No. 5434 - Donald & Mary Sue Lynch

Section 267-53H(1) of the Harford County Code provides:

### H. Services.

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to residential lot or visible from a public road.

Section 267-91 provides as follows:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise on the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities

Case No. 5434 - Donald & Mary Sue Lynch

for recreation and open space.

- (10) The preservation of cultural and historic landmarks.”

The Court of Appeals established the standard for determining whether to grant a special exception in the case of Schultz v. Pritts, stating that

“...[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. (*Emphasis in original*) 291 Md. 1, 11, 432 A.2d 1319 (1981).

The Schultz court further held that “the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327; citing, Anderson v. Sawyer, 23 Md. App. at 624-25, 329 A. 2d at 724 (1974) and Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31, 214 A.2d 146 (1965).

The Hearing Examiner finds that the Applicants have met their burden of proving that the requested use meets the standards and requirements prescribed by Section 267-53D, and 267-53H(1) of the Harford County Code. The subject parcel is zoned AG. All commercial vehicles and equipment will be stored entirely within a fully enclosed building. The parcel contains over six acres, and therefore far exceeds the minimum two acre lot size. The Hearing Examiner adopts the findings of the Department of Planning and Zoning, that the proposed use meets all criteria set forth in Section 267-9I of the Harford County Code.

## Case No. 5434 - Donald & Mary Sue Lynch

The Hearing Examiner also finds that the proposed use, at the proposed location, would not result in any adverse impact to adjoining properties, or have greater impact on adjacent properties, at this location than it would have if allowed elsewhere within the AG District. The subject parcel is very secluded, and the proposed special exception uses will not be visible by either adjoining property owners, or travelers along Maryland Route 155. All improvements on the property are well screened by very tall mature trees. The nearest residential properties are located a considerable distance from the subject parcel. All commercial vehicles and supplies will be stored entirely within a fully enclosed existing building. This building will also house the business office, which will not be visible from the outside. Finally, the business employs a limited number of people, and generates very little traffic. Any traffic which is generated by the requested special exception uses can easily be absorbed by currently existing roadways.

The Hearing Examiner recommends approval of the Application, with the following conditions:

1. That the Applicants prepare a detailed site plan to be reviewed and approved through the Development Advisory Committee (DAC). Applicants shall be required to make any necessary upgrades required to provide access from Carico Road to MD Route 155.
2. The hours of operation shall be limited to 7:00 a.m. to 9:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. on Saturday, with no hours of operation on Sunday.
3. No outside storage of vehicles and materials shall be permitted.
4. Any lighting shall be directed on site and away from the road and/or adjoining properties.
5. That the Applicants shall be responsible for all repairs and maintenance to Carico Lane based upon its use of that right of way in connection with the granting of this special exception.

Date      OCTOBER 1, 2004

Rebecca A. Bryant  
Zoning Hearing Examiner